Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1643

MARGARET E. BOSCO,

Petitioner,

vs.

ECKARDT C. BECK, Region II Administrator, U. S. ENVIRONMENTAL PROTECTION AGENCY; DOUGLAS COSTLE, as Administrator, U. S. ENVIRONMENTAL PROTECTION AGENCY; JERRY F. ENGLISH, as Commissioner, N. J. DEPARTMENT OF ENVIRONMENTAL PROTECTION; PEQUEST RIVER MUNICIPAL UTILITIES AUTHORITY (WARREN COUNTY) and TOWN OF BELVIDERE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF RESPONDENTS TOWN OF BELVIDERE AND PEQUEST RIVER MUNICIPAL UTILITIES AUTHORITY (WARREN COUNTY) IN OPPOSITION

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COUNTER-STATEMENT OF ISSUES PRESENTED

Should the Petition for Writ of Certiorari be granted when the District Court and the Court of Appeals have determined that the decision of the Environmental Protection Agency not to require an Environmental Impact Statement was proper and that such decision was reached independently by the Agency without any undue or improper influence by any local public officials?

COUNTER-STATEMENT OF THE CASE

The Respondents, Town of Belvidere and Pequest River Municipal Utilities Authority (Warren County), adopt and incorporate herein by reference, the facts as set forth in the Brief of Respondent, New Jersey Department of Environmental Protection filed in opposition to the Petition for Writ of Certiorari.

In addition thereto, they state that Irene M. Smith, who is Mayor of the Town of Belvidere, is a life-long resident of that community. For a period of five years, commencing January 1974, she served as a staff aide to then Congresswoman Helen Meyner.

In August 1976, Mrs. Smith was appointed to the Pequest River Municipal Utilities Authority (hereinafter PRMUA). Upon taking office she made a complete review of all the minutes and reports of PRMUA for its prior seven years of existence, and in addition thereto made physical inspections of various wastewater treatment facilities located in adjoining states as well as within the State of New Jersey. This independent research enabled her to

become familiar with the numerous problems related to wastewater disposal and the various methods used for its treatment.

In 1976, Mrs. Smith was elected to the Town Council of Belvidere, and in January of 1977, elected Chairperson of PRMUA. Thereafter, she made constant inquiries, written and oral, of the appropriate Federal and State agencies to determine why the Town of Belvidere sewer project was not getting off "dead center" and requested the agencies to make a decision, either for or against the project. In contacting the elected and appointed officials, ranging from the Vice-President of the United States of America to Aides of Congressmen and employees of EPA, Mrs. Smith always did so in her capacity as an elected and appointed local public official.

ARGUMENT

The Supreme Court should deny the Petition for Writ of Certiorari since the actions of any local officials were not in violation of any statute or ethical code of the United States, or of the State of New Jersey and did not improperly influence the decision of the Environmental Protection Agency.

The Petitioner, Margaret Bosco, both at the trial level in the District Court and before the Third Circuit Court, contended that the Mayor of the Town of Belvidere, Irene M. Smith, had violated the provisions of 18 U.S.C. § 201. Neither Court, however, found any merit to this unwarranted assertion. Now, for the first time in this matter, the Petitioner seeks to establish a new basis for attacking the integrity and actions of Mayor Smith by alleging the Mayor violated the Standards of Ethical Conduct for

Government Officers and Employees, 30 C.F.R. 6469 (1965), which standards were enacted fourteen years prior to the filing of the initial Complaint by Petitioner in this cause.

It is contended by the Respondents, Town of Belvidere and PRUMA, that the third Question Presented in the Peitioner's Brief is not properly before this Court, as the same was never considered by the trial and appellate courts below. While these malevolent claims lack proper appellate foundation for consideration, they must be challenged when they are submitted to the highest Court of the land for resolution.

The actions taken by Mayor Smith as documented in her Affidavit (Pet. App. C.) reveal she did not in any manner seek to impede the efficiency or economy of the government, nor did her efforts to resolve the problem affect the complete independence and impartiality of the Environmental Protection Agency's (hereinafter EPA) approval of the project without requiring an Environmental Impact Statement. The ultimate decision by the EPA was made totally within official channels and has been affirmed on its merits in the District Court. Moreover, the action by the Mayor cannot be deemed to have adversely affected the confidence of the public in the integrity of the Government. To the contrary, her efforts can only serve to reaffirm the faith our citizens have in our representative form of government.

While the Petitioner correctly quoted from the opinion of the trial judge, who stated:

> At oral argument plaintiff referred numerous times to <u>alleged</u> conflicts of

> interest on the part of an individual who was both mayor of Belvidere, the chairperson of the PRUMA, and a former staff member of former Congresswoman Helen Meyner. Although, if proven, there might be some basis for complaint under state law because of the activities of this state official, see, e.g., N.J.S.A. 40:69A-163, these allegations have no bearing upon the question which I am called upon to decide, whether EPA properly concluded that an EIS was not required. (Pet. App. p. 67) (Emphasis Added)

Her continued reliance on this language, as evidenced in her Appellate Brief and the Petition now before this court, demonstrates her total misconception of the conclusion reached therein; that is, even if Mayor Smith did violate N.J.S.A. 40:69A-163, which violation is expressly denied, it would have no bearing upon the EPA's ultimate determination that an Environmental Impact Statement was not required.

The state statute to which the trial judge's observation refers provides:

> Interest in contracts or jobs forbidden
>
> No officer or employee elected or appointed in any municipality shall be interested directly or indirectly in any contract or job for work materials, or the profits thereof, to be furnished or performed for the municipality, and no such officer or employee shall be interested directly or

> indirectly in any contract or job for work or materials or the profits thereof, to be furnished or performed, for any person operating any interurban railway, street railway, gas works, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of such municipality. N.J.S.A.40:69A-163.

The record in the case at bar, is totally barren of any competent evidence which would establish or imply that Mrs. Smith, personally, had any interest, directly or indirectly, in any contract or job for work, materials or the profits thereof with respect to the construction of the Belvidere wastewater collection and treatment project. The Mayor's only interest is shared by the overwhelming majority of the Town's residents and elected officials - the desire to see the sanitary wastewater problem which presently exists in the community eliminated.

In her official position as Mayor, it was Mrs. Smith's duty and obligation to support and protect the Town of Belvidere's vital interest in the construction of a sanitary wastewater system, and she has consistently done so in an ethical and legal manner.

The Petitioner did not refer to other local officials in the Complaint she filed in this cause, nor did she make mention of them in her brief in support of motion for preliminary injunction or at the trial in the District Court. However, she now seeks to attack the integrity of the Warren County Prosecutor, a former Councilman, Chairman of the Belvidere Planning Board

and the project engineer through malicious allegations which are totally unsupported by any reference to competent evidence or citation of law. Mrs. Bosco does not even dignify her baseless claims by indicating how any of these individuals influenced the decision of the EPA to issue a Negative Declaration and Environmental Impact Statement.

These outrageous and libelous statements which the Petitioner has directed against dedicated public servants have no place in a court of law and do not deserve any consideration in resolving the issue before this Court.

For the foregoing reasons, as well as those expressed in the Briefs filed and to be filed on behalf of Respondents Beck, Costle and English, which are hereby adopted, the Petition for Writ of Certiorari should be denied.

CONCLUSION

For all of the foregoing reasons it is respectfully submitted the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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